

REMARKS

These remarks are responsive to the Office Action mailed on February 21, 2007 (“the Office Action”). Applicant thanks the Examiner for a careful and thorough examination of the above-referenced Application and submits the following remarks in response.

Status of the Claims

At the time of the Office Action, claims 93-122, and 149-151 were pending, and claims 1-92, and 123-148 had been Withdrawn from consideration. All pending claims currently stand rejected. Applicant hereby amends claims 93-95, 97, 100, 115-117, and 149, cancels claim 103, and adds claims 152-156. No new matter is submitted by these amendments. Further, these amendments are made merely to clarify the patentable subject matter.

35 U.S.C. § 112 Rejections

The Examiner rejected claim 103 under 35 U.S.C. § 112 as allegedly not being enabled. Office Action, p. 2. Claim 103 is canceled herein.

35 U.S.C. § 102 Rejections

Claims 93-96, 98-102, 104-120, and 150 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Tormala, *et al.* (U.S. Patent No. 5,084,051). Office Action, p. 2. Further, claim 151 has been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Sherwood, *et al.* (U.S. Patent No. 6,454,811) or Boyce (U.S. Patent No. 6,696,073). Office Action, p. 6. As stated in M.P.E.P. § 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

The Applicant respectfully submits that the cited references fail to disclose each and every claimed element of the present invention, either explicitly or implicitly. Specifically, Tormala fails to disclose a “bone graft...shaped and dimensioned to fill a recess around a base of an endosseous implant,” as recited by claim 93. Further, neither Sherwood nor Boyce discloses a “bone graft for filling a recess around an endosseous implant base,” and they further fail to disclose anything relating to “the dimensions of the recess around the endosseous implant base,” as recited by claim 151. Accordingly, each cited reference fails to teach each and every claim limitation of the present invention.

For at least the reasons set forth herein, the Applicant respectfully submits that the cited references fail to anticipate independent claims 93 and 151. Further, all claims that depend from claims 93 and 151 are allowable for at least the reasons set forth with respect to claims 93 and 151. Thus, the Applicant respectfully requests that this rejection be Withdrawn.

35 U.S.C. § 103 Rejections

Claims 97 and 149 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tormala in view of Kuslich, *et al.* (U.S. Patent No. 5,899,908). Office Action, p. 6. Claims 103 and 122 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tormala in view of Sherwood, *et al.* (U.S. Patent App. Pub. No. 2003/0114936). Office Action, p. 7. Finally, claim 121 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tormala in view of Ducheyne (U.S. Patent No. 5,591,453). Office Action, p. 8. In order to render a claim obvious, three basic criteria must be met: (1) there must be some suggestion or motivation to modify the reference's teachings; (2) there must be a reasonable expectation of success;

and (3) the prior art reference, must teach or suggest all the claim limitations. MPEP § 2143. The Applicant respectfully submits that none of the cited references, alone or combined, teach or suggest all claim limitations of the allegedly anticipated claims.

None of the cited references, alone or combined, teach or suggest all claim limitations of claim 93. Accordingly, none of the cited references, alone or combined, teach or suggest all claim limitations of claims dependent from 93. More specifically, neither Tormala or Kuslich, alone or combined, teach or suggest a “bone graft of claim 93, wherein the bone graft comprises a central hole having a bone graft inside diameter...larger than the endosseous implant base greatest outside diameter...,” as recited by claim 97. In contrast, Kuslich teaches a hole defined by a drill guide. Further, neither Tormala nor Kuslich, alone or combined, teach or suggest a bone graft with “at least one bone graft dimension has a known relationship to a bone graft profiler tool dimension,” as recited by claim 149. In contrast, Kuslich only teaches tools used for inserting an implant. Kuslich, col. 2, ll. 20-27; col. 4, ll. 61-67; col. 5, ll. 9-14.

In view of the arguments herein, Applicant respectfully submits that none of the cited references, alone or combined, render claim 93 or any claim depending therefrom obvious.

Conclusion

The Applicant respectfully submits that the application is in condition for allowance, and reconsideration and notice of allowance are respectfully requested. If the Examiner believes that prosecution might be advanced by discussing the application with Applicant's counsel, in person or over the telephone, Applicant's counsel would welcome the opportunity to do so.

Respectfully submitted,

MIDDLETON REUTLINGER

Date: August 21, 2007

/Eric L. Killmeier/
Eric L. Killmeier
Reg. No. 55,327
2600 Brown & Williamson Tower
401 South Fourth Street
Louisville, KY 40202
elk@middreut.com
(502) 625-2748 direct phone
(502) 561-0442 fax